

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
DELTA DIVISION

FIDELITY & DEPOSIT COMPANY  
OF MARYLAND,  
Plaintiff

V.

NO. 2:92CV052-B-O

G. W. HENDERSON, JR.,  
Defendant

MEMORANDUM OPINION

The issue of the proper amount of attorneys' fees and expenses to be awarded the plaintiff is before the court. The plaintiff has a contractual right to attorneys' fees and expenses pursuant to the indemnity agreement in the defendant's application for a public official bond.

The plaintiff seeks an award of fees in the sum of \$25,850.00 and expenses in the sum of \$1908.67. In an untimely response, the defendant asserts that the plaintiff's proposed amount is excessive and recommends a fee of \$5,000.00. The plaintiff has submitted the affidavit of William Selph, one of the attorneys of record, an itemization of services and fees, and a summary of the hourly rate and total number of hours of work for each attorney and paralegal. The itemization reflects a total of \$248.75 hours of work performed during a period of two years and ten months.

I. ATTORNEY'S FEES

In light of the twelve factors set out in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974),<sup>1</sup> the court must determine "a lodestar figure equal to the number of hours reasonably expended multiplied by the prevailing hourly rate in the community for similar work" and adjust the lodestar figure to reflect any factors not otherwise subsumed in the lodestar calculation. Nisby v. Commissioners Court of Jefferson County, 798 F.2d 134, 136-37 (5th Cir. 1986); Jackson v. Color Tile, Inc., 638 F. Supp. 62, 64 (N.D. Miss. 1986), aff'd 803 F.2d 201 (5th Cir. 1986). Four of the twelve Johnson factors are of special importance in arriving at the lodestar amount: (1) the time and labor involved; (2) the customary fee; (3) the amount involved and the results obtained; and (4) the experience, reputation, and ability of counsel. Williams v. Thomas, 692 F.2d 1032, 1037 (5th Cir. 1982, cert. denied, Dallas County v. Williams, 462 U.S. 1133, 77 L.Ed.2d 1369 (1983)).

(1) Time and labor involved:

Two of the ten persons listed in the summary are not identified in Selph's affidavit. The court finds that the time for David W. Mockbee (2.25 hours) and Robert T. Higginbotham, Jr. (.75 hour), as reflected in the summary, is not compensable. The work performed by paralegals is compensable. Missouri v. Jenkins, 491 U.S. 274, 105 L.Ed.2d 229 (1989) (compensable at market rates in the 42 U.S.C. § 1988 context). Other than the paralegal work, the

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<sup>1</sup> Under Local Rule 15(b)(3), the Johnson factors are to be considered for any fee application.

court excludes the time submissions for non-legal work, reflected in the entries dated 10/2/91<sup>2</sup> (Sneed) and 10/14/92 (Fairly). Johnson, 488 F.2d at 717 ("[i]t is appropriate to distinguish between legal work, in the strict sense, and investigation, clerical work, compilation of facts and statistics and other work which can often be accomplished by non-lawyers"). Since sufficient detail is required in any application for determining an accurate award, unreasonably vague submissions are not compensable. The following vague entries should be deleted as noncompensable: 1/11/91, 1/18/91 (Krebs), and entries from 1/29/91 (Sneed) through 4/30/91, entries from 5/22/91 through 8/30/91, 9/12/91, 9/20/91, 2/10/91, 2/12/91, 2/21/91, 3/3/92 (Sneed), 3/9/92, 5/8/92, 5/26/92 (Sneed), 12/8/92 (Sneed), 2/4/93, 3/11/93 (Sneed), and 9/10/93 (Sneed). The 1/14/91 entry of 3.75 hours includes a vague time submission and should be reduced to .50 hour at Sneed's rate.

Hours which "are excessive, redundant, or otherwise unnecessary" are not hours "reasonably expended" and should be excluded from the calculation. Hensley v. Eckerhart, 461 U.S. 424, 434, 76 L.Ed.2d 40, 50-51 (1983). Since the plaintiff was awarded sanctions against the defendant's attorney for failure to attend the initial pretrial conference, the court finds that an award for attention to that matter would be duplicative. Therefore, the entries from 3/17/93 (Selph) through 4/26/93 will be excluded. The 8/11/92 entry for Selph's preparation for and attendance of the

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<sup>2</sup> This entry also includes a vague reference to correspondence with client.

defendant's deposition is duplicative and thus noncompensable. Mississippi State Chapter Operation Push v. Mabus, 788 F.Supp. 1406, 1416 (N.D. Miss. 1992) (no more than one lawyer is necessary for the taking of a deposition). The following entries should be excluded as duplicative: 1/25/91 (Sneed), 4/27/92 (Selph), 5/5/92 (Sneed), 7/15/92 (Sneed), 8/6/92 (Sneed), 12/4/92 (Sneed), 12/07/92 (Sneed), 12/16/92 (Sneed), and 12/28/92 (Sneed).

The following entries are excessive. The entries from 1/15/91 (Sneed) through 1/29/91 (exclusive of paralegals' entries and previously deleted entries), totaling 27.5 hours for legal research and drafting of an opinion letter before the filing of this action, should be reduced to 8 hours at Selph's rate. The entries from 3/4/92 through 3/5/92 for legal research on diversity jurisdiction and venue totaling 9 hours should be reduced to 1 hour at Selph's rate. The entries from 8/6/92 through 8/10/92 (exclusive of the previously deleted entry of 8/6/92 (Sneed)) for the preparation for the defendant's deposition totaling 13.25 hours, in addition to Sneed's 11-hour entry of 8/11/92, should be reduced to 2 hours at Sneed's rate. The entries from 8/12/92 through 8/19/92, regarding the motion to amend the complaint and memorandum totaling 6.25 hours, should be reduced to 2 hours at Selph's rate. The entries of 9/16/92 and 10/14/92 (Selph) and the entries from 11/19/92 through 11/30/92 for the preparation of the motion for summary judgment and 6 1/2-page supporting memorandum totaling 36 hours should be reduced to 12 hours at Selph's rate. The entries of 12/16/92 (Selph) and 12/18/92 for preparation of the response to

the defendant's motion for an extension of time and the entries from 1/19/93 through 1/26/93 for preparation of a 2 1/2-page rebuttal in support of the motion for summary judgment totaling 7.00 hours should be reduced to 2.00 hours at Selph's rate. The entries from 12/4/92 through 12/11/92 for the 2-page response to the defendant's motion for change of venue (exclusive of the previously deleted entries) totaling 4 hours should be reduced to 2 hours at Selph's rate. The entries from 3/1/93 through 3/10/93 for preparation of the 3-page settlement brief and initial pretrial conference totaling 9.25 hours, in addition to the 7-hour entry of 3/11/93 (Selph) for preparation of and travel for the initial pretrial conference, should be reduced to 1.5 hours at Selph's rate. The entries for the preparation of the pretrial order from 9/8/93 through 9/30/93 (exclusive of a previously deleted entry) totaling 18.75 hours should be reduced to 8 hours at Selph's rate. The entries from 10/12/93 through 10/25/93 (Sneed) and the entries from 10/26/93 through 11/02/93 for trial preparation totaling 14.25 hours should be reduced to 10 hours at Sneed's rate.

The compensable hours expended are as follows: .25 hour at Preaus' rate, 34.25 hours at Sneed's rate, 77.5 hours at Selph's rate, 3 hours at Gordy's rate, and .5 hours at Lymberis' rate.

(2) Customary Fee:

Selph's affidavit states that the following hourly rates for the attorneys and paralegals are their respective billable rates for services rendered in this action:

\$185.00 per hour for Eugene Preaus, a partner in the law firm representing the plaintiff;  
\$136.74 per hour for John P. Sneed, a partner in the law firm representing the plaintiff;  
\$83.76 per hour for William F. Selph III, an associate attorney in the law firm representing the plaintiff;  
\$60.00 per hour for Tanya W. Lymberis, a paralegal in the law firm representing the plaintiff; and  
\$50.00 per hour for Vonda Gordy, a paralegal in the law firm representing the plaintiff.

Selph's affidavit further states that the above hourly rates are reasonable and customary for the work performed. The court finds that the proposed hourly rates are customary and reasonable and should be multiplied by the compensable hours expended by attorneys Preaus, Sneed and Selph and paralegals Lymberis and Gordy to arrive at a lodestar amount of \$11,401.00.

The court must next determine whether any of the remaining Johnson factors warrant an increase or decrease of the lodestar figure.

(3) The amount involved and the results obtained:

The plaintiff was granted summary judgment in the sum of \$100,000.00, the amount sought by the plaintiff. The court finds that the reduction of the number of compensable hours of work from

248.75 to 115.5 hours is reasonable in light of the fact that this cause was disposed of by summary judgment.

(4) The novelty and difficulty of the question:

The issues raised in the motion for summary judgment were straightforward and did not involve extensive legal research.

(5) The skill requisite to perform the legal services properly:

The pleadings and memoranda submitted by the plaintiff's counsel clearly demonstrate sufficient legal skill.

Since the plaintiff did not specifically address the Johnson factors, there is no showing that the remaining Johnson factors would warrant any adjustment. The court finds that the factors not otherwise subsumed in the lodestar calculation do not warrant an upward or downward adjustment of the lodestar figure.

## II. EXPENSES

The plaintiff seeks to recover the sum of \$1908.67. The defendant does not specifically challenge the amount requested. The court finds that the amount requested is reasonable in light of the duration of this action and the activity that has transpired, including phone calls and travel expenses.

## CONCLUSION

For the foregoing reasons, the court will award the plaintiff \$11,401.00 for attorneys' fees and \$1908.67 for expenses.

An order will issue accordingly.

THIS, the \_\_\_\_\_ day of November, 1994.

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NEAL B. BIGGERS, JR.  
UNITED STATES DISTRICT JUDGE